IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1085 OF 2005

Malanbai Madhukar Munde ..Appellant.

Versus

Ajit Ashok Mandhare ..Respondent.

Shri P.R.Arjunwadkar for the Appellant.

Shri R.S. Datar i/by Pankaj Das for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 20TH JUNE, 2005

P.C. :

1. Heard. The respondent is the natural father of the minor child of 28 months old, whose mother has died. She has committed suicide. Her suicide note and statement recorded by the police was tendered by the Advocate for the Appellant. There is absolutely nothing to show that the girl child was the cause of the suicide by the mother. There is absolutely no reason why a father should not get custody of his child.

2. Counsel for the appellant contended that because the father is facing prosecution, the child

should not go with him. He also contended that though the parents of the Respondent -father are their, they have got their own engagements and they will not be in a position to look after the child. The third contention was that the parents of the appellant are the grand -father and mother of the child and the child is with them since the death of their daughter and therefore, in these circumstances, custody should be given to the appellant only.

3. The appeal is for admission. But looking to the nature of the issue involved, it is being taken for final hearing by consent. Counsel for the Appellant relied upon the judgment of the Supreme Court reported in **AIR 1992 S.C. 1447** in the case of Kirtikumar Maheshankar Joshi vs. Pradipkumar Karunashanker Joshi. In that case father was facing charge under section 498A and that the children were not willing to live with their father. There are various episodes, showing ill-treatment to their mother at the hands of the father. Therefore, in view of that matter, the Supreme Court, considering the welfare of the children declined to hand over their custody to the father though he had preferential right to their custody. This case is not at all applicable to the present case. Because in the present case, there are no allegations, giving ill-treatment to the deceased mother on account of birth of the female child. There is no question of 28

months' child giving statement against the father. Counsel for the Appellant raises another contention that the child was born at Osmanabad and on the date of the application the child was at Osmanabad and therefore, Osmanabad Court has jurisdiction and not Thane Court. He relied upon the judgement of this Court reported in **AIR 1995 Bombay -30,** in the case of Smt. Shahnaz S. alias Shirin Shaharya vs. Dr. Vijay Y. Gawande. It is under section 9 of the Guardians and Wards Act, which shows that the Application shall be made to the District Court, having jurisdiction of the place where the minor ordinarily resides. Admittedly, the minor was ordinarily residing at Thane from the date of his birth till the death of his mother or till the child was taken away by the Appellant from Thane. The application was, therefore, rightly made before the Thane Court. There was no substance in any of the contentions of the Appellant. It is further contended that the welfare of the child will be in the hands of the appellant as against the natural father. I do not find any substance in this contention.

4. There is no merit in the Appeal. Hence, dismissed.

5. Prayer for stay of the order is rejected.

20.06.2005 (D.G. DESHPANDE,J.)

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